

महाराष्ट्र शासन

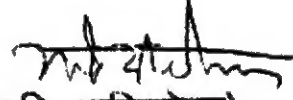
क्र.अकोमा २४०७/अनर्ह/०७/नवि-२६  
नगर विकास विभाग,  
मंत्रालय, मुंबई-४०० ०३२  
दिनांक : २३ एप्रिल, २००७.

प्रति,

आयुक्त,  
सर्व महानगरपालिका,

विषय : अनधिकृत बांधकाम प्रत्यक्ष / अप्रत्यक्षरित्या  
नगरसेवक अथवा त्याच्या नातेवाईकांनी केल्यास  
मुंबई प्रांतिक महानगरपालिका अधिनियमानुसार  
अपात्र ठरविण्याची कार्यवाही करणेबाबत.

उपरोक्त विषयावरील विधी व न्याय विभागाने दिलेल्या अभिप्रायाची प्रत सोबत जोडली आहे. आपल्या महानगरपालिकेत नगरसेवक अथवा त्याचेवर अवलंबून असलेल्या नातेवाईकांनी अनधिकृत बांधकाम केल्यास उपरोक्त अभिप्रायानुसार आपल्या स्तरावरून उचित कार्यवाही करावी

  
(म.दि. आडिवरेकर)  
उपसचिव, महाराष्ट्र शासन

प्रत, माहितीसाठी व योग्य त्या कार्यवाहीसाठी अग्रेषित -

सर्व सहसचिव/ उपसचिव / कक्ष अधिकारी, (नवि-२० ते नवि-२६)  
नगर विकास विभाग, मंत्रालय, मुंबई.

Law and Judiciary Department.

It appears that the Commissioner of Akola Municipal Corporation has disqualified Shri Madan Bhargad, Corporator of said Corporation under section 10(1D) of the Bombay Provincial Municipal Corporations Act, 1949 on the ground that he has constructed unauthorised construction within the premises of the said Corporation.

Shri Bhargad has challenged the order dated 15-1-2007 passed by the Commissioner before the Hon'ble Chief Minister, Maharashtra State. It appears the Hon'ble Chief Minister has stayed the order passed by the Commissioner and ordered to fix up hearing in the said revision/appeal. In view of this, the U.D.D. has referred this file to this Department to confirm their following views:-

*(a) if there is any dispute or doubt in regards to section 11(b)(c)(d), then only the Councillor or Commissioner, at the request of the Corporation, can refer the question to the judge.*

*(b) as per section 10(1D), the Commissioner has powers to disqualify the Corporator and the said order will have to be challenged in the court and not to the State Government under section 451 of the Act, 1949.*

Section 10 of the Act deals with *Disqualification for being a Councillor*. Section 10(1D) speaks as under:-

*"A Councillor shall be disqualified for being a Councillor, if such Councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act or the Maharashtra Regional and Town Planning act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been*

*responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure. Such disqualification shall be for the remainder of his term as a Councillor from the date of the declaration of such structure to be illegal or unauthorised by the concerned authority under the provisions of the said Acts or, as the case may be, from the date of commission of the act of interference or obstruction by the Councillor against the Competent Authority."*

On perusal of said provision, it is clear that the said provision itself empowers to disqualify a Councillor for being a Councillor if such Councillor inter alia, has constructed unauthorised structure violating the provisions of this Act or M.R.T.P. Act, 1966.

Section 11(a) of the Act provides that, "*A councillor shall cease to hold office as such if any time during his term of office, he,-*

- (a) becomes disqualified for being a councillor by reason of the provisions of section 10.*
- (b) .....*
- (c) .....*
- (d) ....."*

Section 12(1) of the Act states that *If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner shall, refer the question to the Judge."*

Considering section 10(1D), section 11(a) r/w section 12(1), it appears that Commissioner has powers to disqualify a Councillor for being a Councillor if his case falls within four corners of section 10. Section 12 clearly states that if any dispute or doubt arises whether a Councillor has ceased to hold office as such under section 11, then only the matter will have

to be referred to the Judge. In other words, it can be said that if there is no doubt or dispute regarding whether a Councillor has ceased to hold office or not, there is no necessity to make reference to the Judge. Since the recourse to challenge the order passed under sections 10(1D) and 11 has been given as Judge of Civil Court, section 451 will not attract in this matter.

In view of above, it can be seen the Commissioner has powers under section 10(1D) r/w section 11(a) to disqualify the Councillor for being Councillor. If he has any doubt or dispute, in that case only he can make reference to the Judge, otherwise not.

The queries raised by the Department may be answered accordingly.

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